



INTERIOR BOARD OF INDIAN APPEALS

Robert L. Thweatt v. Acting Western Regional Director, Bureau of Indian Affairs

39 IBIA 259 (03/23/2004)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

ROBERT L. THWEATT,	:	Order Dismissing Appeal
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 04-48-A
ACTING WESTERN REGIONAL	:	
DIRECTOR, BUREAU OF INDIAN	:	
AFFAIRS,	:	
Appellee	:	March 23, 2004

Appellant Robert L. Thweatt seeks review of a December 15, 2003, decision of the Acting Western Regional Director, Bureau of Indian Affairs (Regional Director), concerning Permit No. WB-155-CR on the Colorado River Indian Tribe's Reservation. The Board of Indian Appeals (Board) received Appellant's notice of appeal on January 29, 2004. For the reasons discussed below, the Board dismisses the appeal as untimely.

On February 18, 2004, the Board docketed this appeal. The Board contacted the Regional Director for a copy of his December 15, 2003, decision and return receipt card for the copy sent to Appellant. The Regional Director's decision correctly advised Appellant that he must file any appeal with the Board within 30 days of his receipt of the decision, and provided Appellant with the Board's correct address. The BIA advised the Board that the postmark on the original return receipt card was December 23, 2003. Thus, Appellant was required to file his notice of appeal by January 24, 2004, in order for it to be timely.

In its February 3, 2004, pre-docketing notice and order to show cause, the Board gave Appellant an opportunity to provide evidence that his appeal was timely filed. On March 11, 2004, the Board received Appellant's response. Appellant states that he sent the appeal on January 14, 2004, by United Parcel Service (UPS) to the Board's prior address. He stated that he used this address because "[t]hat is the address that we have filed numerous appeals with [the Board] over the last decade, including previous appeals in this matter." Appellant's Response at 1. Upon return of the appeal on January 27, 2004, as undeliverable, Appellant sent his appeal by UPS to the Board's correct address. Appellant did not provide any statement or evidence as to the date of his receipt of the Regional Director's decision.

The filing of a timely notice of appeal with the Board is jurisdictional. See 43 C.F.R. § 4.332(a); see also, Renville-Pipeboy v. Acting Great Plains Regional Director, 39 IBIA 188, 189 (2003). The Board has held that a notice of appeal is untimely if the appellant is given correct appeal information, but sends it to an incorrect address. See Joint Board of Control for the Flathead, Mission & Jocko Irrigation Districts v. Portland Area Director, 20 IBIA 223, 224 (1991); Wasson v. Acting Western Regional Director, 39 IBIA 174, 175-76 (2003).

Appellant here was given the Board's correct address by the Regional Director and the Board's address is also of public record. See 43 C.F.R. Part 2, App. B and § 4.332(a). Appellant, however, chose to send the appeal to an incorrect address. The Board received the notice of appeal outside the time set in the regulations. Under these circumstances, Appellant's notice of appeal is untimely.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board dismisses this appeal from the Regional Director's December 15, 2003, decision for lack of jurisdiction.

// original signed
Kathleen R. Supernaw
Acting Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge